

16 MAG 5811

Approved: _____

JONATHAN E. REBOLD

Assistant United States Attorney

Before: THE HONORABLE JAMES L. COTT
United States Magistrate Judge
Southern District of New York

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:
UNITED STATES OF AMERICA : COMPLAINT
:
- v. - : Violations of 18 U.S.C.
: §§ 2252A(a) (2) (B), (a) (5) (B),
RUDY MENA, : (b) (1), (b) (2), and 2
:
Defendant. :
: COUNTY OF OFFENSE:
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SOUTHERN DISTRICT OF NEW YORK, ss.:

AARON SPIVACK, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE

(Possession of Child Pornography)

1. On or about September 9, 2016, in the Southern District of New York and elsewhere, RUDY MENA, the defendant, knowingly did possess and access with intent to view, and attempt to possess and access with intent to view, a book, magazine, periodical, film, videotape, computer disk, and other material containing an image of child pornography that had been mailed, shipped and transported using a means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer, and that was produced using materials that had been mailed, shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, to wit, MENA possessed images of child pornography, including images of prepubescent minors on his cellphone while in the Bronx, New.

(Title 18, United States Code, Sections 2252A(a) (5) (B), (b) (2) and 2.)

COUNT TWO

(Receipt and Distribution of Child Pornography)

2. On or about September 9, 2016, in the Southern District of New York and elsewhere, RUDY MENA, the defendant, knowingly did receive and distribute and attempt to receive and distribute material that contains child pornography that had been mailed, and using a means and facility of interstate and foreign commerce shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, to wit, MENA used a cellphone to receive and distribute images containing child pornography over the Internet while in the Bronx, New York.

(Title 18, United States Code, Sections 2252A(a)(2)(B),
(b)(1) and 2.)

The bases for my knowledge and for the foregoing charges are as follows:

3. I have been a Special Agent with the FBI since October 2008 and I have been assigned to investigate violations of criminal law relating to the sexual exploitation of children, in violation of Title 18, United States Code, Section 2252A, and other offenses.

4. I have personally been involved in the investigation of this matter, and I am familiar with the information contained in this Complaint based on my own personal participation in the investigation, my review of documents, conversations I have had with other law enforcement officers about this matter, my training and experience, and numerous discussions I have had with other law enforcement personnel concerning the creation, distribution, and proliferation of child pornography. Because this Complaint is being submitted for the limited purpose of establishing probable cause to arrest the defendant, I have not included the details of every aspect of the investigation. Where actions, conversations, and statements of others are related herein, they are related in substance and in part, except where otherwise indicated.

Definitions

5. The terms "minor," "sexually explicit conduct," "visual depiction," and "child pornography," as used herein, are defined as set forth in Title 18, United States Code, Section 2256.

Overview of Kik

6. This investigation involves an Internet-based messaging service called "Kik Messenger" ("Kik"). Kik is a free, instant messaging application for mobile devices, developed by Kik Interactive and is available on various mobile operating systems. Kik uses a smartphone's data plan or WiFi to transmit and receive messages, photographs, videos, mobile webpages and other content after a user registers a username. Individuals with a Kik account can also attach a profile picture which can be observed by other Kik accountholders.

MENA's Online Communications

7. Based on my conversations with a detective with the Washington, DC, Metropolitan Police Department ("UC-1"), I learned that UC-1 works in an undercover capacity as part of the Metropolitan Police Department-Federal Bureau of Investigation ("MPD-FBI") Child Exploitation Task Force. In this capacity, UC-1 has made postings online in an effort to identify and communicate with individuals who appear to be sexually interested in children.

8. On or about July 15, 2016, an individual who was later identified as RUDY MENA, the defendant, see infra ¶¶ 12, 14, using the Kik screen name "ragzbagz" initiated a private instant messenger conversation with UC-1. Over the following few weeks, MENA and UC-1 exchanged messages intermittently. In the process, MENA indicated that he was a 23-year-old male from New York and that he had a child.

9. On or about September 7, 2016, an individual who was later identified as RUDY MENA, the defendant, and UC-1 exchanged several messages on Kik. During this exchange, the following occurred in substance and in part:

a. MENA indicated that he was the father of a four-month old girl and sent a photograph of a clothed infant which he claimed was his child.

b. UC-1 informed MENA that UC-1 had a nine-year-old daughter.

c. MENA asked UC-1 to send nude photographs of UC-1's daughter.

d. MENA sent UC-1 a video file of an individual MENA represented to be MENA's daughter lying on the floor naked moving her hands and legs.

e. MENA also informed UC-1 that MENA has rubbed his infant daughter's vagina during diaper changes, stating, in part and substance, "I told you. Playing with her pussy just rubbing it up & down."

10. On or about September 9, 2016, an individual who was later identified as RUDY MENA, the defendant, initiated a private instant message conversation with UC-1 via Kik. During the course of the conversation the following occurred, in substance and in part:

a. MENA sent approximately twelve images to UC-1 including an image depicting a prepubescent child lying on a bed with her shirt pulled up below her breast. The child was not wearing any clothes or underwear below the waist, and her legs were spread exposing her bare vagina. Another image depicts a penis resting on what appears to be the same child's bare vagina. A further image of what appears to be the same child depicts a penis penetrating the child's vagina.

b. UC-1 asked MENA, in substance, why MENA "played" with his infant if MENA was interested in 9 year old girls. MENA replied, in part and substance, "Cus I have no other choice I play with her but rarely its not my age of attraction Now when she hits 2-3 & up it'll be different."

c. MENA stated, in part and substance, "Let me ask you something. If I send you a nude of mine would you send me a nude of your[s]?" MENA then continued to ask UC-1 for nude images of UC-1's daughter.

d. On the same date, MENA also provided UC-1 with his cellphone number, ending in digits "7597" (the "Mena Cellphone Number").

11. On or about September 9, 2016, UC-1 introduced an individual later identified as RUDY MENA, the defendant, to one of my online undercover identities via Kik under the pretext that I was a father and an associate of UC-1's. Following the introduction, I conversed with MENA via Kik, and the following occurred, in substance and in part:

a. MENA advised me that he had a four-month-old infant that he sexually abused.

b. I told MENA that I had a nine-year-old daughter.

c. MENA asked, among other things, for me to send nude photographs of my daughter.

d. MENA asked me what I have done to my daughter; in response I indicated that I performed oral sex on her. MENA indicated that he found this enticing.

e. MENA also indicated that MENA was primarily interested in children aged four through eight but that he was also interested in nine-year-olds. MENA sent me multiple photographs of an infant, at least one of which, based on my training and experience, appears to have been taken from his own mobile device.

Initial Identification of MENA

12. A review of RUDY MENA's, the defendant's, criminal history reveals that MENA is presently on parole for convictions on or about July 17, 2013, in New York County Supreme Court (New York State) for possessing a sexual performance of a child and promoting a sexual performance of a child, in violation of New York Penal Law Sections 263.16 and 263.15, respectively. I have spoken with MENA's probation officer (the "Probation Officer"), who has advised me that MENA uses the Mena Cellphone Number, and that MENA is the father of an infant. I showed the profile photograph attached to the "ragzbagz" Kik account to the Probation Officer, who indicated that the person depicted in that profile photograph was MENA. The Probation Officer also provided me with MENA's home address, which is located in the Bronx, New York (the "Mena Apartment").

13. On or about September 9, 2016, the Honorable Barbara C. Moses authorized a search warrant for the Mena Apartment. Pursuant to that search warrant I and other FBI agents searched the Mena Apartment. While there, I recovered MENA's phone and confirmed that it had the Mena Cellphone Number. I also participated in MENA's arrest.

MENA's Post-Arrest Statements

14. After RUDY MENA, the defendant, was advised of and waived his *Miranda* rights, MENA stated in substance and in part that:

a. MENA is the user of the "ragzbagz" Kik account, and MENA personally exchanged the above-mentioned messages with UC-1 and me. See supra ¶¶ 9-11.

b. MENA sent the above-mentioned photographs, see supra ¶ 10(a), including the ones of the prepubescent child whose vagina was depicted being both touched and penetrated by a penis. MENA was in the Bronx, New York, at the time he sent those photographs. MENA obtained these photographs online.

c. MENA regularly obtains images of child pornography by downloading files containing child pornography through a particular browsing service. After MENA downloads files containing child pornography onto his cellphone, MENA often deletes the files after viewing them.

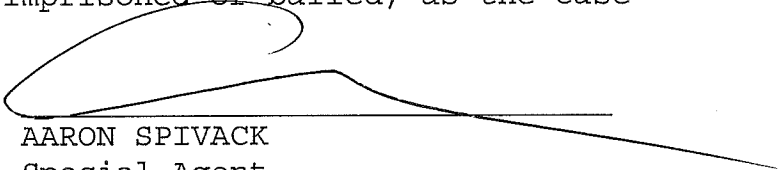
d. MENA exchanges images containing child pornography with other individuals online.

e. MENA is primarily interested in children aged four through ten.

f. On September 9, 2016, MENA took, but subsequently deleted, two naked photographs of MENA's daughter for the purpose of exchanging them with UC-1 via Kik.

g. When MENA was approximately thirteen years old, MENA sexually molested his eight-year-old relative.

WHEREFORE, the deponent respectfully requests that RUDY MENA, the defendant, be imprisoned or bailed, as the case may be.


AARON SPIVACK
Special Agent
Federal Bureau of Investigation

Sworn to before me this
12th day of September, 2016

THE HONORABLE JAMES L. COTT
United States Magistrate Judge
Southern District of New York